IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 572 OF 2005

Changdeo Maruti Jadhav alia Kharadkar ... Appellant (Ori.Defendant)

V/s

Shri Baburao Dnyanu Bhosale ... Respondent

Mr. N.K. Nesari with Mr.A.P.Pawar for the appellant.

Mr. R.G. Ketkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 26TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Satara dated 7.2.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr. Divn., Koregaon, dated 20.11.1997 whereby the suit was partly decreed and plaintiff's prayer for recovery of the suit possession was rejected. However, decree for perpetual injunction against the defendant No.2 came to be passed.

2. The plaintiff filed the suit for claiming relief of

perpetual injunction against the defendants in respect of the agricultural land of Survey No.279/1-A (New Gat No.1269) which was an ancestral property of plaintiff and, secondly, in the alternative, recovery of possession of the suit land.

3. The defendant contested the suit on various grounds inter-alia submitting that the suit of the plaintiff was not maintainable in law on various aspects.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his title and possession over the suit property and it was also established that his possession was obstructed and for that purpose the suit came to be partly decreed for perpetual injunction against the defendant No.2.

5. The appeal was carried to the District Court, Satara. The learned Addl. District Judge, Satara, after hearing both parties concluded that the findings recorded by the learned Trial Judge were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

6. After hearing both the learned counsel, it is clear that there is no substantial question of law involved in this appeal. The questions which are sought to be raised on behalf of the appellant are in respect of appreciation of factual evidence made by the lower appellate Court touching the factual elements and not the question of law, leave aside any substantial question of law.

7. The learned lower appellate Court observed that it was clear that there was partition between two brothers in the year 1972 and it was the contention of the defendant that the suit property was allotted to the share of deceased Ramchandra. However, there is no reference to the fact that the suit property was allotted to the share of Ramchandra. If this was the position, the entire argument advanced on behalf of the appellant on the basis of this aspect are devoid of any merits. Suffice to say, therefore, the concurrent findings recorded by both the Courts below are legal and proper and, therefore, would brook no interference.

8. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1309 of 2004 also stands dismissed with no order as to

costs.

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